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OF COUNSEL
FRED L. MORRISON

March 5, 1985

Edward J. Schwartzbauer, Esq.
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55113

Re: United States, et al. v.
Reilly Tar & Chemical Corp., et al.
Our File No. 3857-011
Civil File No. 4-80-469

Dear Ed:

On January 24, 1985, Mark Kaster requested the City provide Reilly with more complete descriptions of the basis upon which the City had withheld from production various documents included on its lists of privileged documents dated December 14, 1984 and January 8, 1985, which lists were submitted to Reilly pursuant to Paragraph 10 of the Case Management Order.

On February 22, 1985, following submission to Reilly's counsel of three revised lists of privileged documents, which revisions were made to accommodate Reilly's above request, the City provided your office with copies of all documents which the City had determined it would produce in order to facilitate discovery.

90-7-1-21
DEPARTMENT

MAR 11 1985

LANDS DIVISION
POLLUTION ENFORCEMENT

Edward J. Schwartzbauer, Esq.
March 5, 1985
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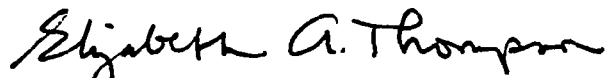
It has come to our attention that four documents which the City intended to withhold from production, and for which the City claims a privilege, were inadvertently included by our legal assistant in the packet of documents submitted to Reilly. The relevant documents are Document Nos. 50021101-50021106, 50021142-50021145, 50021146-50021148, and 50021183.

As clearly evidenced in the City's revised list of privileged documents which accompanied the packet of documents submitted to Reilly Tar on February 22, the City in no way intended to waive any privilege with respect to these four documents or the subject matter thereof.

As you are aware, Minnesota case law holds that the inadvertent disclosure of privileged documents is not a waiver, and that such documents may not be used at any court hearings, at trial, or during discovery. Control Data Corp. v. IBM, 16 Fed.R. Cerv. 2d 1233 (D. Minn. 1972) (Neville, J.). Accordingly, the City requests that Reilly return to the City the four privileged documents which were inadvertently produced to Reilly on February 22, 1985.

With your cooperation and understanding, I am confident that we will arrive at a solution satisfactory to both parties. Please call me at your earliest convenience to discuss this matter further. Thank you.

Very truly yours,


Elizabeth A. Thompson

EAT: jmp
2300e

cc: The Honorable Crane Winton
Wayne G. Popham, Esq.
All Counsel of Record